

REMARKS

Claims 1-20 are currently pending. As a result of the above amendments, Claims 1, 5, 7-10, 12, 14, 15, 17 and 19 have been amended, and Claims 21-23 have been added. Therefore, Claims 1-21 are at issue in this Application.

Section 112 Rejections

Claims 7, 8 and 10 have been amended to resolve the alleged indefiniteness. Regarding the recessed lip portion of Claim 10, Applicants note it is labeled as 240 in Figs. 5 and 6. Claims 17-20 have also been amended to resolve the alleged indefiniteness.

Section 103 Rejections

Claims 1-11 were rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 3,261,516 to Allen ("Allen"). Applicants respectfully traverse this rejection.

To establish a prima facie case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference(s) must teach or suggest all of the claim limitations. The examiner bears the initial burden on factually supporting any prima facie conclusion of obviousness. *See* MPEP § 2142; *In re Vaeck*, 20 USPQ.2d 1438 (Fed. Cir. 1991).

Amended independent Claim 1 is directed to a lid for a container holding a flowable substance, and requires: a cover having *an annular top wall*, a side wall depending from the annular top wall, the side wall having a mounting portion for removably connecting the lid to the container wherein *the mounting portion defines the outermost and lowermost periphery of the cover*, and the cover further having an opening in the annular top wall adapted to permit the passage of the flowable substance through the lid; and, an overlay having a top wall and a side wall depending from the top wall, the side wall having a mounting portion for connecting the overlay to cover wherein *the mounting portion defines the outer periphery of the overlay*, the overlay further having *a downwardly directed projection in the top wall* and at least one aperture; wherein the overlay and the cover are cooperatively dimensioned such that the overlay

and the cover are in rotational engagement wherein the overlay is movable between a first position and a second position, wherein at least a portion of the projection is received in the opening in the first position and wherein the aperture is aligned with the opening in the second position.

Amended Claim 1 is not rendered obvious because Allen does not disclose or suggest all limitations of the Claim. First, Allen's cover 11 has a top wall 13 that is planar (see Fig. 1), not annular or ring-shaped as required by the Claim (see Fig. 6 of Application for annular/ring-shaped top wall 214). Second and as shown in Fig. 3 of Allen, the bead 22 extending from the skirt 15 defines the outermost periphery of the cover 11, but not the lowermost periphery of the cover 11. Figs. 1 and 3 demonstrate that the bead 22 is positioned a measurable distance about the lower edge of the skirt 15. Third, Allen's knurled portion 41 of the overlay 12 defines the outermost periphery of the overlay; however, it is not a component of the overlay's mounting portion. The mounting portion of the overlay 12 consists of the camming wall 32 and the bead 33 that receives the bead 22 (see Fig. 3). Fourth, Allen's second lid embodiment 65 shown in Figs. 4-6 is fundamentally different from the lid of amended Claim 1. The lid 65 comprises an upper snap cap 66 that is rotatably positioned above a spin cap 67. The lower spin cap 67 includes an upwardly extending boss 73 that is received in a dispensing opening 81 in the non-dispensing position of Fig. 6. In contrast to the upwardly extending boss 73 of spin cap 67, amended Claim 1 requires the overlay to have a downwardly directed projection in the top wall. Allen provides no suggestion or motivation to move the boss 73 to the top wall 76 of the upper snap cap 66 and have it be received by the opening 81 in a dispensing position as suggested by the Examiner. For each of these reasons, amended Claim 1 is not rendered obvious and is allowable over Allen.

Dependent Claims 2-11 are allowable over Allen for the reasons explained above for Claim 1. In addition, certain dependent claims require additional structure not suggested by Allen. For example, amended dependent Claim 7 requires the top wall of both the cover and the overlay to have a recessed portion wherein the recessed portions are cooperatively dimensioned such that they are in sliding engagement during movement between the first and second positions. As shown in Figs. 1-6 of Allen, the top wall 26 of the snap cap 12 and the top wall 13 of the spin cap 11 lack the required recessed portion and thus cannot meet the sliding

engagement aspect required by Claim 7. As another example, amended dependent Claim 10 requires the top wall of the cover to have a recessed lip portion. Referring to Fig. 1, Allen's spin cap 11 lacks the required structure.

Claims 12-16 were rejected under 35 U.S.C. §103(a) as being unpatentable over U.K. Patent No. 2,055,773 to Matthews ("Matthews") in view of U.S. Patent No. 6,757,957 to McClean et al. ("McClean"). Applicants respectfully traverse this rejection.

The prima facie case of obviousness has not been established because there is no suggestion or motivation to combine Matthews and McClean. Matthews is directed to a lid having two distinct components - - a stationary element 1 that is affixed to the upper edge of a container. In contrast, McClean is directed to a container 32 with an integral top wall 38 (see the hatching lines in the cross-sectional views of Figs. 3 and 3A) and a single rotatable closure 50 that is affixed to the container top wall 38. Thus, McClean is directed to a one-piece lid and Matthews is directed to a two-piece lid. One of skill in the art of lid design would not have looked to McClean since it is directed to a different type of lid, one that is used in connection with a container having its own top wall. The two patents contain no specific disclosure that would lead one of skill in the art to combine them. Thus, taking the projection 66 from McClean's one-piece lid 50 and applying it the multi-component lid of Matthews to arrive at the structure required by the Claim amounts to improper hindsight reconstruction. Accordingly, the prima facie case of obviousness has not been established.

In addition, the combination of Matthews and McClean does not render amended independent Claim 12 obvious because it does not disclose or suggest all limitations of the Claim. First, the combination does not suggest a cover with a top wall having an opening positioned adjacent an outer periphery of the top wall. Matthews' disclosure briefly mentions a dispensing aperture in the top wall 4 of the element 1, but it is silent as to the location of the aperture and the aperture is not shown in any Figure. Referring to Figs 3 and 3A of McClean, the top wall 38 of the container 32 includes an opening 42, however, the opening 42 resides in a raised plateau 46 that is far from the periphery of the top wall 38. Third, the combination does not suggest a cover with a side wall that extends upward from the mounting portion to the top wall. Referring to Fig. 2, Matthews' element has depending side walls 2 that define a channel 3 that bound the top wall 4, wherein the top wall 4 resides in the same horizontal plane as the

mounting portion that engages the upper edge of the container. Thus, Matthews' element 1 lacks a side wall that extends upward between the mounting portion and the top wall. Since McClean is directed to a container 32 with an integral top wall 38 (see the hatching lines in the cross-section of Figs. 3 and 3A), it lacks the required cover structure, including the mounting portion and the side wall that extends upward between the mounting portion and the top wall. Fourth, the combination does not suggest an overlay having a mounting portion that rotatably connects to the mounting portion of the cover. Matthews lacks disclosure explaining showing how the periphery of the rotatable element 11 structurally interacts with the periphery of the stationary element 1. Similarly, Matthews' figures depict the individual lid components, not the interaction between the components. McClean's closure 50 has a sidewall 54 with a bead 56 that snaps "...into channel 43 of container sidewall 34." (Col. 4, lns. 45-46). Thus, McClean's bead 56 is received by the actual container 32, not the mounting portion of the cover, as required by the Claim. For each of these reasons, amended Claim 12 is not rendered obvious and is allowable over the combination of Matthews and McClean.

Dependent Claims 13-16 are allowable over the combination of Matthews and McClean for the reasons explained above for Claim 12. In addition, certain dependent claims require additional structure not suggested by the combination. For example, amended dependent Claims 14 and 15 each require sliding engagement between select components of the cover and overlay. Neither Matthews nor McClean suggest this particular limitation and as a result, dependent Claims 14 and 15 are allowable for these reasons as well.

Added Claims

Added independent Claim 21 and dependent Claims 22-23 are supported by Applicants' disclosure and are allowable over the art of record.

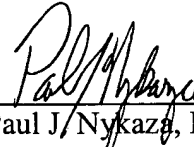
CONCLUSION

In view of the foregoing, Applicants believe that Claims 1-23 are in condition for allowance, and respectfully request early notice of the same. Applicants request that the Examiner call the undersigned attorney with any questions concerning this Reply, or if it will expedite the progress of this Application.

Respectfully submitted,

Dated: November 18, 2005

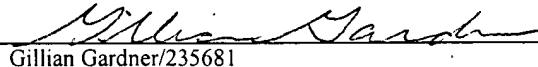
By:



Paul J. Nykaza, Reg. No. 38,984
Peter M. Siavelis, Reg. No. 51,136
Wallenstein Wagner & Rockey, Ltd.
311 South Wacker Drive, 53rd Floor
Chicago, Illinois 60606-6630
312.554.3300

CERTIFICATE OF MAILING (37 C.F.R. § 1.8a)

I hereby certify that this correspondence is, on the date shown below, being deposited with the United States Postal Service, with first class postage prepaid, in an envelope addressed to: Commissioner For Patents, P.O. Box 1450, Alexandria, VA 22313-1450
on November 18, 2005


Gillian Gardner/235681